

## § 381.127

## 9 CFR Ch. III (1–1–11 Edition)

(d) If any marking is by code, the inspector in charge shall be informed as to its meaning.

[37 FR 9706, May 16, 1972, as amended at 39 FR 28516, Aug. 8, 1974; 39 FR 35784, Oct. 4, 1974]

### § 381.127 Wording on labels of shipping containers.

(a) Each label for use on a shipping container for inspected and passed poultry products shall bear, in distinctly legible form, the following information:

(1) The official inspection legend.

(2) The official establishment number of the official establishment in which the poultry product was inspected, either within the official inspection mark, or elsewhere on the container clearly visible and in proximity to the official inspection mark.

### § 381.128 Labels in foreign languages.

Any label to be affixed to a container of any dressed poultry or other poultry product for foreign commerce may be printed in a foreign language. However, the official inspection legend and establishment number shall appear on the label in English, but in addition, may be literally translated into such foreign language. Each such label shall be subject to the applicable provisions of §§ 381.115 to 381.141, inclusive. Deviations from the form of labeling required under the regulations may be approved by the Administrator in specific cases and such modified labeling may be used for poultry products to be exported: *Provided*, (a) That the proposed labeling accords to the specifications of the foreign purchaser, (b) that it is not in conflict with the Act or the laws of the country to which it is intended for export, and (c) that the outside of the shipping container is labeled to show that it is intended for export; but if such product is sold or offered for sale in domestic commerce, all the requirements of the regulations shall apply.

### § 381.129 False or misleading labeling or containers.

(a) No poultry product subject to the Act shall have any false or misleading labeling or any container that is so made, formed, or filled as to be mis-

leading. However, established trade names and other labeling and containers which are not false or misleading and which are approved by the Administrator in the regulations or in specific cases are permitted.

(b) No statement, word, picture, design, or device which is false or misleading in any particular or conveys any false impression or gives any false indication of origin, identity, or quality, shall appear on any label. For example:

(1) Official grade designations such as the letter grades A, B, and C may be used in labeling individual carcasses of poultry or containers of poultry products only if such articles have been graded by a licensed grader of the Federal or Federal-State poultry grading service and found to qualify for the indicated grade.

(2) Terms having geographical significance with reference to a particular locality may be used only when the product was produced in that locality.

(3) “Fresh frozen”, “quick frozen”, “frozen fresh”, and terms of similar import apply only to ready-to-cook poultry processed in accordance with § 381.66(f)(1). Ready-to-cook poultry handled in any other manner and dressed poultry may be labeled “frozen” only if it is frozen in accordance with § 381.66(f)(2) under Department supervision and is in fact in a frozen state. “Individually quick frozen (Kind)” and terms of similar import are applicable only to poultry products that are frozen as stated on the label and whose component parts can be easily separated at time of packing.

(4) Poultry products labeled with a term quoted in any paragraph of § 381.170(b) shall comply with the specifications in the applicable paragraph. However, parts of poultry may be cut in any manner the processor desires as long as the labeling appropriately reflects the contents of the container of such poultry.

(5) The terms “All,” “Pure,” “100%,” and terms of similar connotation shall not be used on labels for products to identify ingredient content, unless the product is prepared solely from a single ingredient.

(6)(i) Raw poultry product whose internal temperature has ever been below

26°F may not bear a label declaration of “fresh.” Raw poultry product bearing a label declaration of “fresh” but whose internal temperature has ever been below 26°F is mislabeled. The “fresh” designation may be deleted from such product in accordance with § 381.133(b)(9)(xxiv). The temperature of individual packages of raw poultry product within an official establishment may deviate below the 26°F standard by 1° (i.e., have a temperature of 25°F) and still be labeled “fresh.” The temperature of individual packages of raw poultry product outside an official establishment may deviate below the 26°F standard by 2° (i.e., have a temperature of 24°F) and still be labeled “fresh.” The average temperature of poultry product lots of each specific product type must be 26°F. Product described in this paragraph is not subject to the freezing procedures required in § 381.66(f)(2) of this subchapter.

(ii) Raw poultry product whose internal temperature has ever been at or below 0°F must be labeled with the descriptive term “frozen,” except when such labeling duplicates or conflicts with the labeling requirements in § 381.125 of this subchapter. The word “previously” may be placed next to the term “frozen” on an optional basis. The descriptive term must be prominently displayed on the principal display panel of the label. If additional labeling containing the descriptive term is affixed to the label, it must be prominently affixed to the label. The additional labeling must be so conspicuous (as compared with other words, statements, designs, or devices in the labeling) that it is likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Product described in this paragraph is subject to the freezing procedures required in § 381.66(f)(2) of this subchapter.

(iii) Raw poultry product whose internal temperature has ever been below 26°F, but is above 0°F, is not required to bear any specific descriptive term. Raw poultry product whose internal temperature has ever been below 26°F, but is above 0°F, may bear labeling with an optional, descriptive term, provided the optional, descriptive term does not cause the raw poultry product

to become misbranded. If used, an optional, descriptive term must be prominently displayed on the principal display panel of the label. If additional labeling containing the optional, descriptive term is affixed to the label, it must be prominently affixed on the label. The additional labeling must be so conspicuous (as compared with other words, statements, designs, or devices in the labeling) that it is likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(iv) Handling and relabeling of products. (A) Except as provided under paragraph (b)(6)(iii)(C) of this section, when any inspected and passed product has become misbranded under this subpart after it has been transported from an official establishment, such product may be transported in commerce to an official establishment after oral permission is obtained from the Area Supervisor of the area in which that official establishment is located. The transportation of the product may be to the official establishment from which it had been transported or to another official establishment designated by the person desiring to handle the product. The transportation shall be authorized only for the purpose of the relabeling of the product. The Area Supervisor shall record the authorization and other information necessary to identify the product and shall provide a copy of the record to the inspector at the establishment receiving the product. The shipper shall be furnished a copy of the authorization record upon request.

(B) Upon the arrival of the shipment at the official establishment, a careful inspection shall be made of the product by the inspector, and if it is found that the product is not adulterated, it may be received into the establishment; but if the product is found to be adulterated, it shall at once be condemned and disposed of in accordance with § 381.95 of this subchapter. Wholesome product will be relabeled in accordance with paragraph (b)(6) (i) or (ii) of this section, as appropriate.

(C) When any inspected and passed product has become misbranded under this subpart after it has been transported from an official establishment,

the owner may transport the product in commerce to a retail entity for relabeling in accordance with paragraph (b)(6) (i) or (ii) of this section, as appropriate, or to other end users, such as hotels, restaurants or similar institutions; or, relabel the product in accordance with paragraph (b)(6) (i) or (ii) of this section, as appropriate if the product is already at a retail entity. A hotel, restaurant or similar institution is not required to relabel product misbranded under this subpart; *Provided*, That the product is prepared in meals or as entrees only for sale or service directly to individual consumers at such institutions, and that the mark of inspection is removed or obliterated. Oral permission shall be obtained from the Area Officer-in-Charge of the Compliance Program for the area in which the product is located prior to such transportation or relabeling. The Area Officer-in-Charge shall record the authorization and other information necessary to identify the product, and shall furnish a copy of the authorization record upon request. Before being offered for sale at a retail entity, such product shall be relabeled.

(c) A calendar date may be shown on labeling when declared in accordance with the provisions of this paragraph:

(1) The calendar date shall express the month of the year and the day of the month for all products and also the year in the case of products hermetically sealed in metal or glass containers, dried or frozen products, or any other products that the Administrator finds should be labeled with the year because the distribution and marketing practices with respect to such products may cause a label without a year identification to be misleading.

(2) Immediately adjacent to the calendar date shall be a phrase explaining the meaning of such date in terms of “packing” date, “sell by” date, or “use before” date, with or without a further qualifying phrase, e.g., “For Maximum Freshness” or “For Best Quality”, and such phrases shall be approved by the Administrator as prescribed in § 381.132.

(d) When sodium alginate, calcium carbonate, lactic acid, and calcium lactate are used together in a dry binding matrix in ground and formed poultry products, as permitted in § 381.147 of

this subchapter, there shall appear on the label contiguous to the product name, a statement to indicate the use of sodium alginate, calcium carbonate, lactic acid, and calcium lactate.

(e) When transglutaminase enzyme is used to bind pieces of poultry to form a cut of poultry, or to reform a piece of poultry from a multiple cuts of poultry, there shall appear on the label, as part of the product name, a statement that indicates that the product has been “formed” or “reformed,” in addition to other preparation steps, e.g., “Formed Turkey Thigh Roast” or “Reformed and Shaped Chicken Breast.”

(f) A country of origin statement on the label of any poultry product “covered commodity” as defined in 7 CFR Part 65, Subpart A, that is to be sold by a “retailer,” as defined in 7 CFR 65.240, must comply with the requirements in 7 CFR 65.300 and 65.400.

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**§ 381.130 False or misleading labeling or containers; orders to withhold from use.**

If the Administrator has reason to believe that any marking or other labeling or the size or form of any container in use or proposed for use with respect to any article subject to the Act is false or misleading in any particular, he may direct that the use of the article be withheld unless it is modified in such manner as the Administrator may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the Administrator, he may request a hearing, but the use of the labeling or container shall, if the Administrator so directs, be withheld pending hearing and final determination by the Secretary in accordance with applicable rules of practice. Any such determination with respect to the matter by the Secretary shall be conclusive unless, within 30 days after the receipt of notice of such final determination, the person adversely affected thereby appeals to the U.S. Court of Appeals for